IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO.202 OF 2001

IN

FIRST APPEAL NO. 719 OF 1989

Gopal Ravaji Kamble since
deceased through his LRs.
Gopal Kamble & Ors. .. Appellants.

vs.

Ishwarlal Balcand Tatiya
& Ors. .. Respondents.

Mr. Rajdeep Khandeparkar h/f R.G. Ketkar for
Appellants.
Ms. Smita Mane h/f Prafulla B. Shah for
Respondent Nos. 1 & 2.
Ms. A.A. Agarwal for R. No. 3.

CORAM: J.N. PATEL &,
A.A. SAYED, JJ.
DATE: 9TH JULY, 2007.

ORAL JUDGMENT : (Per J.N. Patel, J.)

. This Letters Patent Appeal has been filed by the legal representatives of Mr. Kiran Kamble who died while travelling in truck No. MTF 8906 aggrieved by

the decision of the learned Single Judge setting aside the award passed by the Motor Accidents Claim Tribunal, Satara wherein the legal representatives of the deceased were awarded a sum of Rs.66,000/-.

2. The facts which led to the incident are that on 8th March, 1986 Kiran Kamble (the deceased) boarded the truck at village Wadhar for reaching his native place village Kasegaon. On the way, when the vehicle was on the bridge near the village Malkhed, one of the front tyres of the truck burst and because of the sound of bursting Kiran Kamble who was sitting near the door jumped the truck, dashed against the railing of the bridge and was again thrown back near the rear tyre of the truck and lost his life. The Tribunal found that his legal representatives are entitled for compensation and awarded a sum of Rs. 66,000/- which came to be challenged by the owner and driver of the truck. The learned Single Judge relying on the eye witness account held that this was a case where the victim died due to his voluntary conduct and, therefore, quashed and set aside the award without disturbing the amount received by the legal representatives on account of 'no fault liability'.

3. The learned counsel appearing for the appellants submitted that this is a case where the learned Single Judge ought not to have interfered with the fact finding of the Tribunal which held the owner

responsible to pay compensation to the legal representative on the ground that there was no proper maintenance of the vehicle as it has come on record that the tyre which got burst was not road worthy as it was having a gatter and, therefore , the owner was vicariously liable for the accident.

4. The learned counsel for the appellants submitted that even admitting the fact that the deceased was a gratuitous passenger, in so far as the owner is concerned, his liability does not get discharged to pay compensation.

5. It is submitted that the learned Single Judge has not appreciated the evidence on record in proper perspective and allowed the appeal preferred by the owner and, therefore, the impugned judgment and order deserves to be quashed and set aside.

6. On the other hand, it is the contention of the learned counsel appearing for the respondents that the view taken by the learned Single Judge cannot be faulted with. It is submitted that this is not a case where the said Kiran Kamble died due to an accident but because of his voluntary act and, therefore, the impugned judgment and order does not call for any interference.

7. With the assistance of the learned counsel for

the parties we have gone through the evidence on record and find that the deceased Kiran Kamble jumped out of the truck inspite of being cautioned by the other occupant of the vehicle i.e. the cleaner. This evidence on record clearly indicates that it was a voluntary conduct on the part of Kiran Kamble in taking the risk in jumping out of the truck which proved to be fatal for which no other person can be held liable and, therefore, we do not find any merit in the Letters Patent Appeal. The same is dismissed. No order as to costs.

8. In view of the dismissal of the Letters Patent Appeal, the civil application does not survive and hence the same is dismissed as infructuous.

(J.N. Patel, J.)

(A.A. Sayed, J.)